

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

<b>UNITED STATES OF AMERICA</b>	)	3:16cv142
	)	3:01cr0005
v.	)	<b>Electronic Mail</b>
	)	
<b>VICTOR DARNELL THOMAS</b>	)	

**MEMORANDUM ORDER**

AND NOW, this 16<sup>th</sup> day of December, 2019, the court having issued [246] the Memorandum Order of September 23, 2019, denying [229] defendant's motion to correct sentence pursuant to 28 U.S.C. § 2255 as untimely, IT IS ORDERED that the concomitant request for a certificate of appealability be, and the same hereby is, denied.

"A certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). "When the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim, a [certificate of appealability] should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." Slack v. McDaniel, 529 U.S. 473, 484 (2000). Where the district court has rejected a constitutional claim on its merits, "[t]he [movant] must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." Id.

Applying those standards here, it is clear that jurists of reason would not find it debatable as to whether each of movant's claims should be dismissed as untimely. As noted in the Memorandum Order of September 23, 2019, the binding authority mandates that they be deemed

untimely and so dismissed. Accordingly, movant's concomitant request for a certificate of appealability must be denied.

s/David Stewart Cercone  
David Stewart Cercone  
Senior United States District Judge

cc: Adam N. Hallowell, AUSA

*(Via CM/ECF Electronic Mail)*

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